

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Mail Processing Network Rationalization
Service Standard Changes, 2012

Docket No. N2012-1

**UNITED STATES POSTAL SERVICE NOTICE OF FILING LIBRARY REFERENCE
USPS-LR-N2012-1/NP28 AND APPLICATION FOR NON-PUBLIC STATUS
(May 25, 2012)**

In accordance with Rule 31(b)(2), the United States Postal Service provides notice today that it files the following Category 2 Library Reference:

USPS-LR-N2012-1/NP28	Materials Responsive to Interrogatory NPMHU/USPS-9
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This Library Reference is being filed in support of the response to interrogatory NPMHU/USPS-9. The contents of the Library Reference consist of a list of postal facilities responsive to the interrogatory. The list is filed non-publicly for the reasons expressed in the attached application. Redaction of the names of the facilities on the list for the purposes of creating a public version would result in the production of a document on which absolutely no information would be visible. Accordingly, the Postal Service has not prepared a public version of USPS Library Reference N2012-1/28.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**UNITED STATES POSTAL SERVICE APPLICATION FOR
NONPUBLIC TREATMENT OF LIBRARY REFERENCE USPS-LR-N2012-1/NP28**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) applies for nonpublic treatment of certain data filed under seal with the Commission.

The materials covered by this application consist of a list of mail processing facilities alluded to by witness Marc Smith (USPS-ST-4 at 7) as having been identified by the Postal Service as ones that it might be able to vacate depending on the network configuration that ultimately emerges from its ongoing rationalization initiative. As reflected in the response to NPMHU/USPS-9, whether or not the specific facilities on the list are ultimately vacated depends on network rationalization implementation and scheduling decisions that have yet to be made. Accordingly, there is a measure of uncertainty surrounding the Postal Service's future plans for these facilities and whether specific ones will be vacated.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The premature public disclosure of the locations of a property that the Postal Service may vacate and potentially seek to sell on

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, PRC Docket No. RM2008-1, June 19, 2009.

the open market could adversely affect the Postal Service's ability to obtain the maximum market value for that property should it be offered for sale, the Postal Service considers the list of properties reflected in USPS Library Reference N2012-1/28 to fall within the scope of information not required to be disclosed publicly. Accordingly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The document designated as nonpublic consists of a list of postal properties deemed as a result of the February 23, 2012 facility consolidation decisions to be potential candidates for sale on the commercial real estate market. In keeping with good business practice, such a list would not be disclosed publicly by a similarly-situated property owner. Based on its long-standing involvement in the commercial real estate market, the Postal Service does not believe that any commercial enterprise seeking to maximize the return on its real estate holdings would publicly identify which of its properties it *might* sell before making final case-by-case decisions regarding whether and when to (1) put specific properties on the open market for sale or (2) enter into negotiations on specific properties with prospective buyers.

The service changes at issue in this docket will be made in conjunction with operational changes that are in the process of being scheduled for implementation in

phases over the next two years. In light of the May 18, 2012 public announcement that the underlying operational changes will be phased in over an extended period, the Postal Service will be reevaluating the status of each of the specific properties listed in USPS Library Reference N2012-1/NP-28 to determine whether they will be re-purposed in lieu of sale, or whether any such re-purposing will only temporarily delay the pursuit of a sale. During that time, decisions could be made to sell other facilities.

Local commercial real estate market conditions can weigh heavily on the timing of the Postal Service's announcement of plans to dispose of specific properties as it seeks to maximize the prices it can obtain for each property. A significant lag between a revelation that the Postal Service is contemplating the sale of a property before putting that property on the market or up for bid could result in a dilution of buyer interest in the property. Such a lag could cause potential buyers to hedge and pursue alternative opportunities or make them less willing to bid on a property or agree to meet the Postal Service's asking price during negotiations. Such consequences would diminish the ability of the Postal Service to obtain maximum value for a property, to its economic detriment. Accordingly, it is the Postal Service's view that the contents of this library reference would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).²

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, PRC Docket No. RM2008-1, Mar. 20, 2009, at 11.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

None.

(3) A description of the materials claimed to be nonpublic in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are nonpublic;

The responsive data consist of the names, addresses and other information identifying the postal properties alluded to at page 7 of USPS-ST-3 that could potentially be sold by the Postal Service.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

See the discussion above in part (1). If the list in USPS Library Reference N2012-1/NP28 were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer economic harm. This information is clearly commercially sensitive to the Postal Service as the owner of numerous commercially valuable real properties that may be offered for sale via bid or negotiation in the future. Premature disclosure of the location of properties that may be placed on the market or pre-decisional disclosure of the fact that certain properties may be under consideration for sale could, to the economic detriment of the Postal Service, affect the prices that purchasers are willing to pay for specific properties.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified harm: Premature pre-decisional public disclosure of the location of a postal property being considered by postal management for sale from USPS Library Reference USPS-LR-N2012-1/NP28 could be used by potential buyers to the detriment of the Postal Service.

Hypotheticals: A commercial real estate developer or buyer's representative obtains access to the list in USPS Library Reference USPS-LR-N2012-1/NP28. The representative analyzes the list to assess which of postal properties are (or are not) being contemplated for sale. The potential buyer uses the information to obtain an early start in assessing alternative nearby non-postal commercial properties that could potentially suit its needs and to develop a negotiating strategy designed to lower the price the Postal Service will accept for its property.

The Postal Service intends to put a property up for sale, but must first take measures to improve the market value of the property by removing underground fuel storage tanks to avoid discouraging potential buyers. Public revelation of the Postal Service's intent to sell before it completes the necessary remediation of the property in advance of formally soliciting purchasers may discourage potential buyers from pursuing a purchase when the property is formally placed on the market because of their concern that the Postal Service might not be able to turn the property over in time to meet their needs. As a result, the Postal Service may fail to attract competitive bids or find itself with diminished leverage as it seeks to negotiate a sale price, resulting in less of a return on the sales transaction than otherwise might have been experienced.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that list of properties in USPS Library Reference N2012-1/NP28 should be withheld from persons not directly involved in analyzing the costing testimony presented by USPS witness Smith (USPS-T-9 and USPS-ST-3) as it relates to the service changes at issue in this docket, in order to prevent the list from being publicly or otherwise disseminated to persons or entities in the commercial real estate industry who could potentially be involved in negotiating or bidding on the purchase of postal properties, as well as their consultants and attorneys.

(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that nonpublic materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of the above-described materials appearing in USPS Library Reference USPS-LR-N2012-1/NP28.